

**REMARKS**

Reconsideration of this application, as amended, is respectfully requested.

In the Official Action, the Examiner rejects claims 10-13 and 26-29 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner argues that the claims are generally narrative and indefinite and fail to conform with current U.S. practice. In addition, the Examiner argues that the claims appear to be a literal translation into English and are replete with grammatical and idiomatic errors.

In response, without acquiescing to the Examiner's rejection and in the interests of advancing prosecution, claims 10-13 and 26-29 have been canceled, thereby rendering the rejection thereof moot. Accordingly, it is respectfully requested that the rejection of claims 10-13 and 26-29 under 35 U.S.C. § 112, second paragraph, be withdrawn.

In the Official Action, the Examiner rejects claims 1 and 6 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,503,855 to Maslanka (hereinafter "Maslanka"). Furthermore, the Examiner rejects claims 1 and 13-16 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,846,241 to Kittur et al., (hereinafter "Kittur"). Lastly, the Examiner rejects claims 2-5 and 17-32 under 35 U.S.C. § 103(a) as being unpatentable over Kittur in view of U.S. Patent No. 5,366,463 to Ryan (hereinafter "Ryan").

In response, without acquiescing to the Examiner's rejections and in the interests of advancing prosecution, claims 1-32 have been canceled, thereby rendering the rejections thereof moot. Accordingly, it is respectfully requested that the rejections of claims 1-32 under 35 U.S.C. §§ 102(b) and 103(a) be withdrawn.

Lastly, new claims 33-58 have been added. New claims 33-58 are fully supported in the original disclosure. Thus, no new matter has been entered into the disclosure by way of the addition of new claims 33-58.

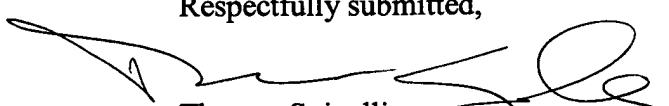
New independent claim 33 recites a diathermic cutter comprising “a cylindrical main body member including a distal end portion having a surface portion which is insulated.” Similarly, new independent claim 46 recites a diathermic cutter comprising “a sheath including a distal end portion having a surface portion which is insulated.”

The Applicant respectfully submits that at least such features of independent claims 33 and 46 are not disclosed or suggested by any of the cited references, either individually or in combination.

Thus, the Applicant respectfully submits that new independent claims 33 and 46 patentably distinguish over the prior art and are allowable and that claims 34-45 and 47-58 are at least allowable as being dependent therefrom.

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,



Thomas Spinelli  
Registration No.: 39,533

Scully, Scott, Murphy & Presser, P.C.  
400 Garden City Plaza, Suite 300  
Garden City, New York 11530  
(516) 742-4343  
TS:cm